

United States Court of Appeals for the Ninth Circuit

EPIC GAMES, INC.,
Plaintiff, Counter-defendant – Appellant, Cross-Appellee,

v.

APPLE INC.,
Defendant, Counterclaimant – Appellee, Cross-Appellant.

Appeal from the U.S. District Court
for the Northern District of California
The Honorable Yvonne Gonzalez Rogers (No. 4:20-cv-05640-YGR-TSH)

**DECLARATION OF KATHERINE B. FORREST
IN SUPPORT OF EPIC GAMES, INC.’S
MOTION TO EXCEED TYPE-VOLUME LIMITATIONS**

Christine A. Varney
Katherine B. Forrest
Gary A. Bornstein
Antony L. Ryan
Yonatan Even
Omid H. Nasab
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000

Paul J. Riehle
FAEGRE DRINKER BIDDLE & REATH
LLP
Four Embarcadero Center
San Francisco, CA 94111-4180
(415) 591-7500

Thomas C. Goldstein
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814-6902
(202) 362-0636

Counsel for Appellant, Cross-Appellee Epic Games, Inc.

Pursuant to 28 U.S.C. § 1746, I, Katherine B. Forrest, hereby declare as follows:

1. I am an attorney in New York, New York, and counsel for Appellant, Cross-Appellee Epic Games, Inc. (“Epic”) in this litigation. I have personal knowledge of the matters set forth below and, if called to testify to them, could and would do so competently.

2. I submit this Declaration in support of Epic’s motion to exceed type-volume limitations by filing an enlarged response and reply brief of 22,940 words.

3. On March 28, 2022, the Court granted the motion of Appellee, Cross-Appellant Apple Inc. (“Apple”) to file an oversized brief of 25,480 words that served as both a response to Epic’s appeal and an opening brief for Apple’s cross-appeal. (Epic Dkt. 97 (Case No. 21-16506).) Apple’s brief exceeded the word limit in Circuit Rule 28.1-1(c) by 8,980 words.

4. My co-counsel and I have worked diligently to attempt drafting a response and reply brief within the word limits of this Court’s rules. However, the word limit in Circuit Rule 28.1-1(b) would not allow Epic to adequately address Apple’s oversized brief as well as the 15

amicus curiae briefs filed in support of Apple, which address a substantial number of arguments relevant to Epic's appeal and to Apple's cross-appeal. (See Epic Dkt. 93-105, 111, 118-25.)

5. As set forth in Apple's motion to exceed the type-volume limitations (Epic Dkt. 92-1), and its accompanying declaration of Mark A. Perry (Epic Dkt. 92-2), this is a complicated and legally consequential antitrust case. It is in the interest of the Court and the public that this case be briefed with a thoroughness commensurate with its complexity and importance. I believe that an extension of the type-volume limit is necessary for Epic to achieve this objective.

6. Counsel for Epic has discussed this motion with counsel for Apple, who informed Epic that Apple does not oppose the motion.

May 25, 2022

/s/ Katherine B. Forrest
Katherine B. Forrest

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Declaration of Katherine B. Forrest in Support of Epic Games, Inc.'s Motion To Exceed Type-Volume Limitations with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 25, 2022. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

May 25, 2022

/s/ Katherine B. Forrest
Katherine B. Forrest